



Economic Impact Analysis Virginia Department of Planning and Budget

9 VAC 25-590 – Petroleum Underground Storage Tank Financial Responsibility

Requirements

Department of Environmental Quality

August 21, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The General Assembly authorizes the State Water Control Board in §62.1-44.34:9 of the Code of Virginia to promulgate regulations necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations. Specifically, §62.1-44.34:12 of the Code of Virginia mandates that the State Water Control Board adopt regulations that conform to federal financial responsibility requirements of 42 U.S.C §6991b(d) and any regulations adopted thereunder.

The proposed regulation (1) modifies the self-insurance requirements to account for aboveground storage tank financial responsibility liabilities, (2) removes the standby trust requirement when demonstrating financial responsibility through a letter of credit, a surety bond, or a guarantee (to be removed at the final stage of adoption of the regulation), (3) includes additional reporting requirements for owners and operators of underground storage tanks and

providers of financial assurance, (4) requires surety bonds to meet additional conditions designed to reduce the cost to the Commonwealth in the case of litigation by the State Water Control Board to compel payment, and (5) includes additional language that specifies the procedure for the establishment and use of group self-insurance pools to demonstrate financial responsibility.

The proposed regulation also updates references in the existing regulation, incorporates changes that make the regulation consistent with the Code of Virginia and with current practice, adds clarifying language, and includes some minor administrative changes.

Estimated Economic Impact

(1) The proposed regulation modifies the self-insurance requirements to account for aboveground storage tank (AST) financial responsibility liabilities. Underground storage tank (UST) owners choosing to self-insure will be required to have tangible net worth that covers not only the UST financial responsibility amount required by this regulation but also any AST financial responsibility amount required under 9 VAC 25-640 (Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements) for which they have used self-insurance to demonstrate financial responsibility. According to the Department of Environmental Quality (DEQ), the AST financial responsibility requirements were adopted in 2001, after the last revision of the UST financial responsibility regulation. The proposed regulation is intended to incorporate any AST financial liabilities for which self-insurance has been used to demonstrate financial responsibility into the net worth calculations of a UST owner seeking to self-insure. According to a limited survey of UST owners by DEQ, approximately 68% (or 3,944 out of 5,800 UST owners) use self-insurance to demonstrate financial responsibility.

The proposed change is likely to raise the net worth required for self-insurance and prevent some UST owners from using self-insurance to demonstrate financial responsibility. DEQ believes that very few UST owners will be disqualified from self-insuring because of this change. According to DEQ, smaller UST owners tend not to use self-insurance to demonstrate financial responsibility. The paperwork requirements and the cost of hiring an independent certified public accountant to verify the financial statements are usually greater for small UST owners than the cost of obtaining a third party instrument such as a surety bond or a letter of credit. Larger UST owners that do use self-insurance are likely to have adequate financial

resources to cover their AST and UST liabilities and thus are not likely to be significantly affected by the proposed change.

While the proposed change may disqualify some UST owners from self-insuring, it is also likely to produce some economic benefits. Requiring UST owners to have net worth that covers their UST and AST financial responsibility requirement will ensure that UST owners that self-insure have adequate resources to cover the cost of taking corrective action and meeting third party claims in the event of leaks or releases from their aboveground and underground storage tanks.

The net economic impact of the proposed change will depend on the likelihood of an entity that owns ASTs and USTs experiencing leaks or releases from both within a short period of time. If the likelihood of such an occurrence is significant, the proposed change is likely to have a positive economic impact by ensuring that UST owners that do use self-insurance to demonstrate financial responsibility for their ASTs and USTs have adequate resources to cover the cost of taking corrective action and meeting third party claims arising out of leaks or releases from both types of tanks. If, on the other hand, the likelihood of such an occurrence is not significant, the proposed change is likely to have a net negative economic impact by increasing the cost of self-insurance for UST owners while not providing any significant additional economic benefits. There is no data currently available on the likelihood of leaks or releases occurring within a short period of time at aboveground and the underground storage tanks owned by the same entity.

(2) The proposed regulation removes the standby trust requirement when using surety bonds, letters of credit, and guarantees to demonstrate financial assurance (DEQ intends to remove the standby trust requirement for guarantees at the final stage of adoption of the proposed regulation). Under existing policy, a UST owner using a surety bond, a letter of credit, or a guarantee to demonstrate financial responsibility is required to set up a standby trust at the time when the surety bond, letter of credit, or guarantee is acquired. In the event of a leak or release, the surety, the institution issuing the letter of credit, or the guarantor is required to deposit the amount needed to undertake corrective action and cover third party claims into the standby trust (the exact amount needed is determined by the State Water Control Board).

The proposed regulation removes the standby trust requirement. In the event of a leak or release from a UST, the surety, the institution issuing the letter of credit, or the guarantor will be required to directly pay the State Water Control Board. According to DEQ, the money so collected will be deposited into the Virginia Petroleum Storage Tank Fund and used for corrective action and to cover third party claims arising from the leak or release. Based on a survey of a subset of UST owners, DEQ estimates that approximately 6% of UST owners (348 out of a total of 5,800 UST owners) use letters of credit, less than 1% (under 58 out of 5,800 UST owners) use surety bonds and trusts, and 2% (116 of out of a total 5,800 UST owners) use guarantees to demonstrate financial responsibility.

The proposed change is likely to have a net positive economic impact. According to DEQ, it costs between \$500 and \$1,000 to set up a standby trust fund in addition to which the institution setting up the standby trust levies an annual maintenance fee for each year the trust fund is in operation. Thus, the proposed change will produce economic benefits for UST owners using surety bonds, letters of credit, or guarantees to demonstrate financial assurance, as they will no longer have to incur the cost of setting up and operating a standby trust fund. At the same time, the proposed change is not likely to impose any additional costs as it does in now way impair the ability of the State Water Control Board to recoup the cost of undertaking corrective action and covering third party claims in the event of a leak or release from a UST. Instead of being put into a standby trust, the proposed regulation requires that the money be paid directly to State Water Control Board.

(3) The proposed regulation includes additional reporting requirements for owners and operators of USTs and their providers of financial assurance. Owners and operators of USTs and their financial assurance providers are required to report any voluntary or involuntary bankruptcy proceedings to the State Water Control Board. In addition, financial providers are required to notify the State Water Control Board of cancellation or non-renewal of a financial responsibility mechanism prior to cancellation of coverage. Guarantees, surety bonds, and letters of credit can be terminated no less than 120 days after the State Water Control Board has been notified. Insurance and group self-insurance pool coverage can be terminated no less than 60 days after notification (unless the termination is due to meet misrepresentation or nonpayment of dues, in which case coverage can be terminated 15 days after notification). Under the existing regulation, owners and operators of USTs and their financial assurance providers were not required to notify

the State Water Control Board in the event of bankruptcy proceeding and/or cancellation of coverage.

The additional notification requirements are likely to impose some additional costs on owners and operators of USTs and the providers of financial assurance. However, the additional requirements are also likely to produce some economic benefits. By better ensuring that UST owners meet the financial assurance requirements, the proposed change reduces the chances of a UST owner not being able to pay the amount required to undertake corrective action and settle third party claims in the event of a leak or release. Overall, the small additional cost of notifying the State Water Control Board (the cost of sending a letter by certified mail) is likely to be outweighed by the benefits of ensuring that a UST owner is able to meet the financial burden of a clean up.

(4) The proposed regulation requires surety bonds to meet additional conditions designed to reduce the cost to the Commonwealth in the case of litigation by the State Water Control Board to compel payment. These include requiring the surety to pay interest on the amount of the claim starting seven days after notification by the State Water Control Board of the claim and requiring the surety to be liable for all costs and legal fees incurred by the State Water Control Board in enforcing a claim. The proposed regulation also includes additional language clarifying the circumstances under which a claim against a surety bond might be made. According to DEQ, the changes were proposed following litigation with a bond company to enforce a claim that lasted almost a year.

The proposed change is likely to have a positive economic impact. By requiring the surety to pay interest retroactively on the amount of the claim and bear the legal costs associated with litigating the claim, the proposed regulation reduces the costs incurred by DEQ when a surety challenges a claim. Transferring some or all of the cost associated with challenging a claim to the surety will produce economic benefits by resulting in a more efficient use of resources. With some of the cost being subsidized by DEQ (and hence the taxpayers), sureties that challenge a claim are not paying the full costs associated with doing so. This could potentially result in more claims being challenged than if the cost of doing so was a more accurate reflection of actual costs. By transferring some or all of the cost, the proposed change

will result in only those sureties challenging the claim that are willing to bear the actual cost of doing so.

(5) The proposed regulation specifies the procedure for the use and establishment of group self-insurance pools in demonstrating financial responsibility. While the existing regulation does provide for the use of group self-insurance pools to demonstrate financial assurance, it does not include many specifics. The additional language included in the proposed regulation clarifies how these pools are to be established and used to demonstrate financial responsibility. The additional language is based on State Corporation Commission regulations on group self-insurance pools promulgated in 2002. DEQ believes that including the additional language will clarify aspects of the existing regulation to do with the establishment and use of group self-insurance pools. According to DEQ, there are no UST owners currently using group self-insurance pools to demonstrate financial responsibility.

The proposed change is likely to have a small positive economic impact. To the extent that it clarifies and improves the understanding and implementation of the existing regulation, it is likely to produce some economic benefits.

Businesses and Entities Affected

The proposed regulation affects all UST owners and operators operating in Virginia and their providers of financial assurance. According to DEQ, there are 29,000 USTs owned by 5,800 individuals and/or entities currently in operation at 11,000 sites across Virginia. Based on a limited survey of UST owners, DEQ estimates that when demonstrating financial responsibility 68% use self-insurance, 23% obtain liability insurance, 6% use letters of credit, 2% use guarantees, and less than 1% use surety bonds and trust funds. Modification of the self-insurance requirements to account for AST financial responsibility liabilities will affect all UST owners using self-insurance to demonstrate financial responsibility. Some UST owners may be disqualified from using self-insurance to provide financial assurance. Based on the DEQ survey, approximately 68% or 3,944 UST owners out of 5,800 use self-insurance to provide financial assurance. Removal of the standby trust fund requirement for surety bonds, letters of credit, and guarantees is likely to reduce the cost incurred by UST owners when using those instruments to demonstrate financial responsibility. Based on the DEQ survey, approximately 6% of UST owners or 348 out of 5,800 use letters of credit, approximately 2% use guarantees, and less than

1% use surety bonds and trust funds when providing financial assurance. The additional reporting requirements are likely to affect all UST owners operating in Virginia and their financial assurance providers. Transferring some or all of the cost of challenging a claim to the bond company mounting the challenge is likely to make it more expensive for bond companies, and possibly for UST owners using surety bonds to demonstrate financial responsibility, to provide financial assurance. According to the DEQ survey, less than 1% of UST owners use surety bonds to demonstrate financial responsibility. Specification of the procedure for the establishment and use of group self-insurance pools will affect all UST owners operating in Virginia and is likely to encourage the use of this mechanism when providing financial assurance. According to DEQ, there are currently no UST owners using group self-insurance pools to demonstrate financial responsibility.

Localities Particularly Affected

The proposed regulation affects all localities in the Commonwealth.

Projected Impact on Employment

The proposed regulation is not likely to have a significant impact on employment.

Effects on the Use and Value of Private Property

Proposed changes such as modification to the self-insurance requirements to account for AST financial responsibility liabilities, transfer of some or all of the cost of challenging a claim to the bond company mounting the challenge, and inclusion of additional reporting requirements for UST owners and their financial assurance providers are likely to increase the cost of operation for some UST owners and financial assurance providers and thus lower their asset value. However, some UST owners and financial assurance providers are likely to benefit through lower costs and higher asset values from proposed changes such as removal of the standby trust fund requirement for surety bonds, letters of credit, and guarantees and inclusion of additional language specifying the procedure for the establishment and use of group self-insurance pools to demonstrate financial responsibility.